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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <i>SLING</i>
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>NOV 6, 2005</u> Signature <u>Robert J. Harter</u>	Application Number <u>10/848, 868</u>	Filed <u>5/18/2004</u>
Typed or printed name <u>ROBERT J. HARTER</u>	First Named Inventor <u>DENNIS O. BETWAY</u>	Art Unit <u>3652</u>
		Examiner <u>LOWE, MICHAEL S.</u>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number 32, 031

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Robert J. Harter

Signature

ROBERT J. HARTER

Typed or printed name

608-788-2778

Telephone number

11/6/2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of ONE forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE****IN THE APPLICATION OF:** Dennis O. Betway**GROUP:** 3652**U. S. SERIAL NO:** 10/848,868**EXAMINER:** Lowe, Michael S.**FILING DATE:** May 18, 2004**FOR:** Device and Method for Manually Carrying a Load

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11/6/2005

date

Rab J. He

Signature

(Reg. 32,031)

La Crosse, Wisconsin

November 5, 2005

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents

Alexandria, VA 22313-1450

Dear Commissioner:

This is in response to the Final Rejection mailed September 20, 2005. The applicant requests review of the Final Rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal in compliance with 37 CFR 41.31. The review is requested for the reasons stated on the attached sheet.

Applicant's Reasons for the Requested Review

The Examiner states "Johannis teaches a method to carry a load" (see final rejection mailed 9/20/2005, pg. 2, first line of paragraph beginning with "re claims 6, 17). The fact is, however, the Johannis device does not carry a load just as people cannot pick themselves up by tugging on their shoelaces. The bed of the Johannis reference is what carries 100% of the patient's weight. In fact, the Johannis device is only shown exerting a horizontal or downward force on the patient, thus it clearly does not carry a load.

At the top of page 3 of the final rejection, the Examiner states that it would have been obvious to modify Johannis by the general teaching of Wiedemann to have a first person and a second person extend the sling underneath the load; however, the Examiners' rejection fails to point out where the prior art suggests such a modification.

Modifying Johannis to have two people lift the patient, as suggested by the Examiner, renders the Johannis device unsatisfactory for its intended purpose, which is to enable patients to help themselves. Johannis, column 4, lines 57 – 60 states, "In all cases, the patient lift of my invention saves considerable work and time to nurses, other hospital attendants and family members." MPEP 2143.01 states that, "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

None of the cited prior art discloses or even suggests positioning at least one handle underneath the load, as specifically claimed by applicant in claim 15.

It should be noted that the applicant's claims are limited to a method rather than an apparatus.

For these reasons and others mentioned in the applicant's response submitted on June 25, 2005, the applicant submits that the final rejection of September 20, 2005 relies on clear factual errors and omissions of essential elements needed for a *prima facia* rejection.

Respectfully submitted,



Robert J. Harter (Reg: 32,031)

Patent Agent for Applicant

608-788-2778